

4th January 1954]

* **SRI S. RAMALINGAM** :—“ கூட்டுறவு கிரேடிட் சொசைட்டி, லான்ட் மார்ப்கேஜ் பாங்க் இவைகளில் நம்முடைய காபிடல் எவ்வளவு, எவ்வளவு பேர்கள் கடன் வாங்கி இருக்கிறார்கள், எவ்வளவு அங்கத்தினர்கள் இருக்கிறார்கள், பிரிந்துபோன ஆந்திர மாகாணத்தில் எவ்வளவு பேர்கள் இருக்கிறார்கள், எவ்வளவு கடன் இருக்கிறது, அவர்களுக்குக் கிடைக்கவேண்டிய தொகை என்ன இவைகளையெல்லாம் சொன்னால்தான் இந்த சட்டத்தை பாஸ் பண்ணமுடியும். இப்பொழுது இருப்பது வெளிச்சமாக இருக்கிறது. சும்மா குட்டையில் எருமை மாட்டை போட்டுக்கொண்டு விலை பேசுவது போல் இருக்கிறது. இதை யெல்லாம் தெரிந்து கொண்டால்தான் இந்த மசோதாவைப் பாஸ் பண்ணமுடியும்.”

* **THE HON. SRI C. SUBRAMANIAM** :—“ Sir, I wish better language is used with reference to the proceedings of this House. Apart from that, if the hon. Member wanted that information, certainly it would be given to him. But he was keeping quiet during the first reading stage and also the second reading stage. But when the Bill is in its third reading stage, and is put to vote, if the hon. Member should rise and ask for information, I am really sorry for it. If the hon. Member is interested, certainly we will give the information to him. Even if he asks for information in the form of a question, the information will be made available to him. The question was gone into by the directors concerned. That is why Mr. Ramachandra Reddiar referred to the assets and liabilities of the banks and societies. After all, the shareholders are interested in this. They have taken these things into consideration when they divided the assets and liabilities. The only thing is that we have to give legislative sanction for that. For that only we are validating the ordinance.”

MR. SPEAKER :—“ The question is—

‘ That the State Co-operative Societies (Reconstitution and Formation) Bill, 1954, be passed into law.’ ”

The motion was put and carried.

(2) **THE MADRAS GENERAL SALES TAX (AMENDMENT) BILL^a, 1954.**

* **THE HON. SRI M. A. MANICKAVELU NAICKER** :—“ Sir, I beg to introduce the Madras General Sales Tax (Amendment) Bill, 1954, and move—

‘ That the Bill be taken into consideration at once.’

“ Sir, I may explain the necessity for this Bill. There was an amendment to the General Sales Tax Act in the year 1951, which introduced a new section—section 2-A. Thereby a Tribunal was constituted in order to hear appeals against the decisions of officials lower down. The Tribunal consisted of a Chairman, who was a District Judge, and two other Members of whom one was a Chartered Accountant and the other a Deputy Commissioner of Commercial Taxes. Under the Act, it was incumbent that all the three Members of the Tribunal should sit together and dispose of cases. But we found in the actual working of the Act some drawbacks and

^a Published in the *Port St. George Gazette*, dated 9th December 1953.

[Sri Mr. A. Manickavelu Naicker] [4th January 1954]

defects. For example, if one of the three members takes leave for one month—every member is entitled to privilege leave for a month every year—the work of the Tribunal will come to a standstill, because it is incumbent that all the three should sit together. Again, if one member takes casual leave then the Tribunal cannot function. Again suppose one of the assesses, is a relation of one of the members, then that member cannot sit, and that is the difficulty. Again, the departmental member, who is one of the three members, might have given a decision as the Deputy Commissioner, when he was a Deputy Commissioner, and when the same case goes before him, he cannot sit on the Tribunal. If one member cannot take part in the proceedings of the Tribunal, the Tribunal cannot function, as it is incumbent under the Act that all the three should sit together. Therefore, it was found necessary that some alteration in the rules should be made. Further, when the Andhra Partition took place, of the three members who constituted the Tribunal then, two were allotted to the Andhra State. This reduced the number of the Tribunal to one. Therefore the Tribunal could not function. It was very necessary to see that the hearing of the cases was not delayed and the Government issued the ordinance on 31st October 1953. The rule requires that when an ordinance is promulgated, within six weeks from the date of the first meeting of the Assembly, a Bill should be brought before the Legislature and passed. That is why we have brought in this Bill. I commend this motion for the acceptance of this House.”

MR. SPEAKER :—“ Motion moved—

‘ That the Madras General Sales Tax (Amendment) Bill, 1954, be taken into consideration at once.’”

12-40 p.m. * SRI S. RAMALINGAM :—“ Mr. Speaker, Sir, I beg to move—

‘ That the Madras General Sales Tax (Amendment) Bill, 1954, be referred to a Select Committee.’

“ இந்த மசோதாவை ஒரு பெருகுக்குக் கமிட்டிக்கு விடவேண்டும் என்று இந்த திருத்தத்தைப் பிரேரேபிக்கிறேன். காரணம் என்னவென்றால் கனம் மந்திரி அவர்கள் இந்த மசோதாவை பிரேரேபித்து பேசும்போது இந்த டிரிபூனலில் மூன்றுபேர்கள் இருந்தார்கள், அவர்கள் உட்கார்ந்து விசாரிக்கவேண்டிய இடத்தில் இரண்டு பேர்கள் உட்கார்ந்து விசாரிக்கவேண்டும் என்ற காரணத்தை எடுத்துக் கூறினர். ஆனால் வியாபாரிகளுக்கு கஷ்டங்கள், தொந்தரவுகள் இருக்கின்றன என்பதைப்பற்றி அவர் சொல்லவில்லை.”

THE HON. SRI C. RAJAGOPALACHARI :—“ வியாபாரிகளுக்கு தொந்தரவுகள் கிடையாது.”

* SRI S. RAMALINGAM :—“ வியாபாரிகளுக்கு நிறைய தொந்தரவுகள் இருக்கின்றன. ஆகையால் அவர்களுடைய அபிப்பிராயங்களையும் கேட்டு அதன் பிறகு ஒரு முடிவுக்கு வந்தால் நன்றாக இருக்கும். அது இல்லாமல் நாம் எதேச்சையாக சட்டம் செய்தால் அது நன்றாக இருக்காது. சம்பந்தப்பட்டவர்களைக் கேட்டு அவர்களுக்கு தங்களுடைய குறைகளைச் சொல்லிக் கொள்ள சந்தர்ப்பம் கொடுக்கவேண்டும். ஏற்கனவே இந்த விற்பனை வரி

4th January 1954] [Sri S. Ramalingam]

அதிகாரிகளால் வியாபாரிகளுக்கு அநேகம் தொந்தரவுகள் இருக்கின்றன வென்று இங்கும் வேளியிலும் எடுத்துச் சொல்லிக்கொண்டிருக்கிறார்கள். இவ்விதம் நாம் சட்டம் செய்தால் இன்னும் அவர்களுக்கு அதிகமாக தொந்தரவுகள் ஏற்படும், இதைப் பற்றி அநேகர் சாங்கோபாங்கமாக பேசி இருக்கிறார்கள். இன்னும் அதிகமான தொந்தரவுகள் ஆகாமல் இருப்பதற்காகவாவது அவர்களையும் கேட்டுக்கொண்டு இந்த சட்டத்தை நிறைவேற்றவேண்டும் என்பதற்காகத்தான் இதை பொறுக்குக் கமிட்டிக்கு விடவேண்டும் என்று கேட்டுக்கொள்ளுகிறேன்.”

* SRI K. VINAYAKAM :—“ Mr. Speaker, while supporting the amendment of the hon. Member Sri Ramalingam to refer this Bill to a Select Committee, I adduce different reasons for the same. Now, the Sales Tax Appellate Tribunal consists of three Members and the Government state that a difficulty has arisen since the decision in all cases referred to the Tribunal has under the Act, to be taken by all the three members sitting together. They also say that it is very difficult to get all the members together for a sitting so as to dispose of cases referred to it for decision and that it causes inconvenience to the Tribunal. My fear in this respect is this. After all, how many cases are disposed of by this Tribunal per year? There cannot be so many cases as to inconvenience the Members. The Hon. Minister must come forward with categorical instances showing that so many cases were brought up before the Tribunal with the result that in those days all the three Members could not be brought together for a sitting which caused a lot of harassment or undue delay in the disposal of cases. We feel that there may not be many appeals to be heard by this Tribunal because the members of the merchant community do not appeal in all cases. They appeal only in strong and hard cases where they feel that they have been harassed or overassessed. But, in many cases, I have found from experience that the ordinary merchants do not want to encounter all these practical difficulties by taking their cases to the appellate authorities, which, of course, on the face of it, may be justified as far as their cases are concerned. They rather willingly submit to the insane rulings of the officers concerned and pay the tax assessed in order to avoid trouble. Such being the natural tendency of merchants, there may not be many cases coming up before the Tribunal for decision. In view of the smallness of the number of cases to be decided by the Tribunal, would it not be possible to so adjust as to see that all the cases are brought up before it when the three Members are present? Really, they cannot be absent for the entire year. As the Hon. Minister was saying, each Member can take one month's privilege leave in a year. Assuming that all the three Members take leave in different periods of the year, three months in a year will be there when the Tribunal cannot function. But there are nine months in a year when they can dispose of all the cases. My fear is this. If power is vested with one Member to decide this case or that, it amounts to vesting more power or concentrating power in a few hands, whereas it should be diffused among three Members where there will be more of democracy than officialdom. That is the idea which prompts me to request the Government to refer this Bill to a Select Committee where this aspect can be looked into.”

[4th January 1954]

* THE HON. SRI C. RAJAGOPALACHARI :—“ Sir, hon. Members may know that the arrears were very considerable and it caused great inconvenience to parties and not merely to the Finance Department of the Government. It is necessary to dispose of taxation cases fairly expeditiously from the point of view of both the public exchequer and the merchant's exchequer. So far as the question whether it is better to have three Members on the Tribunal than having two is concerned, I may point out to the hon. Members that even in the High Court where very important cases are dealt with, generally two Judges dispose of most important matters and the Full Bench is not called in. Here, we have three Members on the Tribunal so that the matter may be disposed of without difficulty as and when occasion arises. Ordinarily, a Bench of two Members could be constituted out of the three Members, and it would be more than enough for disposal of cases pertaining to sales tax assessment. Further, provision is made that where there is a difference of opinion on any point, the original decision will stand where there is no upsetting by a majority. This is a simple provision in this Bill. I submit that the most important consideration is quick disposal and especially, members of the mercantile community and shopkeepers should be told what the final decision is. As a matter of fact, it was with very great difficulty that we were able to reduce the arrears this year.”

* SRI K. VINAYAKAM :—“ On a point of clarification, Sir. On a former occasion, a proposal for constituting such a Bench was brought forward in respect of cases coming up before the Taxation Appeals Committee of the Corporation. It was stated that difficulties were experienced by the assesseees as a result of the arrangement that the cases should be disposed of by a committee consisting of three members, inside the Corporation building. Then, the Hon. the Chief Minister came forward and pleaded that in view of the difficulties caused to the assesseees, an Appeals Committee consisting of two members, with the Chairman and another member, was enough to pass orders. Now, what is the experience that we are now gaining from the appeals referred to this Committee? I happen to be a Member of the Council of the Corporation. I may tell you, Sir, from my experience that as long as the entire Committee sat and decided cases, there was a little amount of justice meted out to the assesseees in the City of Madras. But since a law empowering a Committee consisting of only two members to pass judgments over these appeals was passed, the people have been experiencing great hardship and they have been feeling that the judgments passed by this kind of Appeals Committee are not justified. They have also no resource to go to the Court of law. They shrug their shoulders and say, ‘ May God help us ’. They simply pay the tax that is assessed and wash their hands of the business. That is the difficulty which we have been experiencing and out of practical experience, I am saying what effect this kind of curtailment of liberties has upon the assesseees concerned.”

4th January 1954]

* THE HON. SRI C. RAJAGOPALACHARI :—“ Sir, the hon. Member, if I may be permitted to rise again, has given his own reasons. The comparison with the arrangement in regard to the Corporation affairs lends support to this Bill. Here, it is provided that two members shall decide the matter and that is what exactly the law relating to the Corporation affair also provides. Here, we have made a provision that two members may sit over these matters and an additional provision as to what should be done if there is a difference of opinion. If there is a difference of opinion, the original decision shall prevail. That is the principle governing the whole matter. I submit that there is no great point, as far as I am able to see, in what the hon. Member Sri Vinayakam has said.”

* SRI S. RAMALINGAM :—“ கனம் சபாநாயகர் அவர்களே, கனம் 12-50
முதல் மந்திரி அவர்கள் சொல்லும்போது இரண்டு அங்கத்தினர்கள் p.m.
உட்கார்ந்து கொண்டு விசாரிக்கவேண்டுமென்று சொன்னார். இப்பொழுது
க்ளாஸ் 2 (சி)யில் படி இரண்டு அங்கத்தினர்கள் உட்கார்ந்து விசாரிக்கும்
போது இரண்டு அங்கத்தினர்களுக்கும் வித்தியாசம் ஏற்பட்டால் அவர்கள்
தனித்தனியாக தீர்ப்புக் கூறவேண்டும் என்றும் என்னென்ன விஷயங்களில்
அவர்கள் ஒப்புக்கொண்டிருக்கிறார்களோ அவைகளில் ஒருதலைத் தீர்ப்புக் கூற
வேண்டும் என்றும் அவர்களுக்கு வித்தியாசம் ஏற்பட்டிருக்கும்போது எப்படி
தீர்ப்புக் கூற வேண்டும் என்றும் இருக்கிறது. இதனால் வியாபாரிகளுக்குத்
தான் பாதகம் ஏற்படுவதோடு அவர்கள் அதிகப்படியான வரி
கொடுக்கவேண்டியதாக இருக்கும். அதிகாரிகள் கொடுக்கும் கணக்கை
வைத்துக்கொண்டுதான் அவர்கள் தீர்ப்புகள் சொல்லுவார்கள். அதனால்
தான் கண்டிப்பாக இந்த மசோதாவைக் கொண்டு வருவதற்கு முன்
வியாபாரிகளை விசாரித்து அவர்களுடைய அபிப்பிராயத்தைத் தெரிந்து
கொள்ளவேண்டும். அதனால்தான் இந்த மசோதாவை ஒரு செலக்ட்
கமிட்டிக்கு விட வேண்டும் என்ற திருத்தத்தைப் பிரேரேபிக்கிறேன்.”

MR. SPEAKER :—“ நீங்கள் இந்த திருத்தத்தை வாபஸ் வாங்கிக்
கொள்ளுகிறீர்களா ? ”

SRI S. RAMALINGAM :—“ நான் வாபஸ் வாங்கிக்கொள்ளவில்லை.
வற்புறுத்துகிறேன். I press.”

MR. SPEAKER :—“ I am now going to put the amendment of
hon. Member Sri S. Ramalingam to the vote of the House. The
question is—

‘ That the Madras General Sales Tax (Amendment) Bill,
1954, be referred to a Select Committee.’ ”

The motion was put and lost.

MR. SPEAKER :—“ I am now going to put the original motion
to the vote of the House. The question is—

‘ That the Madras General Sales Tax (Amendment) Bill,
1954, be taken into consideration at once.’ ”

The motion was put and carried.

Clause 2.

MR. SPEAKER :—“ The motion moved—

‘ That clause 2 do stand part of the Bill.’ ”

[4th January 1954]

SRI N. K. PALANISAMY :—“ Sir, I shall move my amendment.”

MR. SPEAKER :—“ நீங்கள் இரண்டு திருத்தங்கள் கொடுத்திருக்கிறீர்கள். எந்த திருத்தத்தை இப்பொழுது நீங்கள் பிரேரேபிக்கப் போகிறீர்கள் ? ”

SRI N. K. PALANISAMI :—“ Sir, I move my first amendment which reads,—

‘ In sub-clause (i), in line 3, after the words “ appoint ”, insert the words “ In consultation with the South Indian Chamber of Commerce ”. ’”

SRI S. RAMALINGAM :—“ I second the amendment, Sir.”

SRI M. NARAYANA KURUP :—“ Sir, I move the following amendments standing in my name :—

‘ (1) In the proposed new sub-section (1) of section 2-A, add at the end, the words “ but they shall be non-officials ”.

‘ (2) In the proviso to the proposed new sub-section (3) (a), for the word “ may ” substitute the word “ shall ”.

‘ (3) In the proposed new sub-section (3) (c), after the words “ appellant or applicant ” in the fourth line, insert the words “ if the Bench in its discretion does not think fit to post it before a Full Bench ”. ’”

SRI K. T. SREEDHARAN :—“ I second the amendments, Sir.”

SRI S. RAMALINGAM :—“ Sir, I move—

‘ In the proposed sub-section 3 (c), for the word “ against ” occurring in lines 4 and 7, substitute the words “ in favour of ”. ’”

The amendment was duly seconded.

MR. SPEAKER :—“ Clause 2 and the amendments thereto moved by hon. Members Sri M. Narayana Kurup, Sri N. K. Palanisami and Sri S. Ramalingam are now before the House for discussion.”

* SRI M. NARAYANA KURUP :—“ Sir, my intention in moving my first amendment is that there should be non-officials. As the provisions stand at present it may be that both the two members may be officials of the department. In regard to legal questions and technical matters, a man of the grade of District Judge and a man having knowledge of the department and its working may be essential. But let me submit that such a qualified man may be available outside, or we may even have retired officials. The danger of making the same person a prosecutor as well as a judge is inherent in any Committee or Tribunal. My amendment only says that there shall be non-officials. If the Government, however think that some qualifications are necessary for the people,

4th January 1954] [Sri M. Narayana Kurup]

such qualifications as the Government may think fit, may be prescribed. By doing this, their object can also be achieved with a certain amount of apparent fairness to the parties concerned, because they will not go in appeal before the same department which has assessed them or which has done them an injustice.

“As regards my second amendment. I wish to submit that when complicated questions of law crop up, the matter should be referred to the Chairman and his opinion ascertained. It is possible that such questions of law may be discussed by a Bench of two members who are not at all conversant with law. Of course, this section gives them the option, or in other words, consultation with the Chairman is made optional. Inasmuch as two of the members are likely to be departmental officials, such complicated questions should be dealt with only after obtaining the permission or the opinion of the Chairman. That is why I want to substitute the word ‘shall’ for the word ‘may’ in this proviso.

“Sir, the Hon. Chief Minister just now explained how cases are being disposed of. Now, this is a Tribunal of three judges. It is quite possible that questions may be discussed by two of them. If there is a dissenting voice, they cannot, according to the present provisions, refer the matter to a third judge or place it before a Bench. In important matters, where members themselves feel that it is a fit case that should be considered by a Full Bench, the discretion of the two members should not be tied down. The section does not make it obligatory on them to refer the matter to a third member or judge. When the members differ in fundamentals and at the same time feel that a particular matter is a fit case to go before a third judge, they may be allowed to refer it to a third judge. I think this is a very reasonable amendment. I see no reason why the Government cannot accept this amendment as well as the other two amendments which are after all formal ones and do not materially affect the provisions of the Bill or the intention of the Government.”

* THE HON. SRI C. RAJAGOPALACHARI :—“Sir, before you proceed to allow other hon. Members to speak on the amendments, I would like to know from hon. Member Sri Narayana Kurup what exactly he means by saying that there should be non-officials. Does he mean that the non-officials should be honorary members? Or is it his intention that in selecting the judges for the Tribunal we should select people who have no legal or other official qualifications and that we should select only non-officials? Let me inform the hon. Member that the Tribunal is a permanent Court. It is not an *ad hoc* courts sitting now and then. It is a permanent Court so to say.”

SRI M. NARAYANA KURUP :—“Sir, I only wanted to know whether these other two persons will be connected with the department which taxes these people.”

* THE HON. SRI C. RAJAGOPALACHARI :—“They are persons with judicial or accounts qualifications. Non-officials would be without any qualification for such work.”

[4th January 1954]

SRI S. SWAYAMPRAKASAM :—“ They should not be connected with the taxation department.”

THE HON. SRI C. RAJAGOPALACHARI :—“ They are permanently transferred to the Tribunal.”

SRI N. K. PALANISAMI :—“ Sir, I move—

‘ In clause (c) of the proposed sub-section (3), for the words “ the point shall be found . . . points on which they are divided,” substitute the words “ the appeal or application shall be referred to the Tribunal consisting of all the three members for decisions ”.’

“ கனம் சபாநாயகர் அவர்களே, ட்ரிபுனலில் ஏற்கனவே மூன்று பேர்கள் உட்கார்ந்து கொண்டு விசாரிக்க வேண்டும் என்று இருந்தது. இந்த மசோதாவைக் கொண்டு வந்த காரணம் நியாயம் கிடைக்கக் கூடாது என்பதற்காகத்தான். வியாபாரிகளுக்கு அப்படியே தொந்தரவுகள் இருக்கவேண்டும் என்பதற்காகத்தான் இதைக் கொண்டு வரப்பட்டிருக்கிறது. கண்டிப்பாக மூன்று பேர்கள் இருந்துகொண்டுதான் விசாரிக்கவேண்டு என்று இருக்கவேண்டும். இரண்டு பேர்கள் உட்கார்ந்து கொண்டு விசாரிக்கலாம் என்று இருக்கக்கூடாது. வியாபாரிகளுக்கு ஏற்கெனவே சர்க்கார் அதிகாரிகளால் கொடுக்கக்கூடிய தொல்லைகள் பற்றி எல்லோருக்கும் தெரியும். இருந்தபோதிலும் அனுபவம் இல்லாத அங்கத்தினர்களைப் போட்டால் அவர்கள் அதிகாரிகள் செரல்லுவதைத்தான் ஏற்றுக்கொள்ளுவார்கள். அவர்களும் வியாபாரிகளுக்கு சாதகமாக தீர்ப்புச் சொல்லமாட்டார்கள். வியாபாரிகளுடைய வருமானம் என்ன, அவர்களுடைய வியாபாரம் என்ன, அவர்கள் என்ன வரி கொடுக்கவேண்டும், என்ன வியாபாரம் செய்கிறார்கள் என்பதை தெரிந்து கொள்ளமுடியாது. இவைகளைப்பெல்லாம் அவர்கள் யோசித்துச் செய்ய முடியாது. சர்க்கார் அதிகாரிகள் என்ன தொகை கொடுக்கிறார்களோ அதை வைத்துக்கொண்டுதான் அவர்கள் தீர்ப்பு சொல்லுவார்கள். வியாபாரிகள் சம்பந்தப்பட்டதைச் சொல்ல தென்னிந்தியா வியாபாரிகள் சங்கம்தான் வியாபாரிகளுடைய விஷயத்தை எடுத்துச் சொல்ல முடியும். ஆகவே அவர்களைக் கலந்துகொண்டு இந்த ட்ரிபுனலுக்கு அங்கத்தினர்களைப் போடவேண்டும் என்று இந்த தீர்மானத்தை பிரேரேபிக்கிறேன்.

The amendment was seconded.

MR. SPEAKER :—“ Motion moved—

‘ In clause (c) of the proposed sub-section (3), for the words “ the point shall be found . . . points on which they are divided ”, substitute the words “ the appeal or application shall be referred to the Tribunal consisting of all three members for decision ”.’ ”

DR. K. B. MENON :—“ I understand the point made by the Hon. the Chief Minister. But I do believe that the induction of a non-official with qualifications into the Tribunal will be a healthy factor.”

THE HON. SRI C. SUBRAMANIAM :—“ Once he is put on the Tribunal, he will become an official.”

* THE HON. SRI C. RAJAGOPALACHARI :—“ We are now appointing many tribunals. The hon. Member knows what is going on. We select people with judicial experience who are fairly free and have retired from service but are not too old. We

4th January 1954] [Sri C. Rajagopalachari]

provide that at least one should be a judicial officer. If it is possible to get more people with judicial qualifications, we would certainly prefer them. But at least one should be there and that is what is put down in clause 2. As regards others, we shall prescribe such qualifications as will secure us the right type of men. Hon. Members should also remember that in dealing with large trade matters and assessment matters, it is no use creating a state of things where public suspicion will be roused. So, there is no question of having non-officials in a semi-official position. They become officials as soon as they are put on the job. It will be exceedingly difficult to open out the Tribunal to non-officials as if it were a committee. I think that is the position. We have canvassed all probable difficulties and have dealt with them. We cannot improve on the terms of the Bill. This is all the assurance I can give. We have tried our best to constitute a proper court."

SRI K. VINAYAKAM :—" May I know from the Hon. the Chief Minister whether the Government had any difficulty in the matter of choosing members with proper qualifications from among non-officials for the present Tribunal? Had they any practical difficulty? Otherwise, why should they relax the qualifications in the Bill? "

* THE HON. SRI C. RAJAGOPALACHARI :—" We have not made any change in that respect. As far as I know, the position is this. The qualifications required are two-fold. One is they should be legally trained and they should have a judicial temperament. The other is that they should know something about the nature of the work that they have to do—namely, accounts, money, trade, business and the like. These are kept in mind in choosing members. It is not easy to get non-officials with judicial qualifications. There are several difficulties in making the selection. Even for a judge's post, we find difficulties. As regards the membership of the Tribunal it is not considered as good as a High Court judgeship to which with some difficulty we get the right type of people to help to some extent. Therefore, we have reduced the minimum number of judicial members to one, a district judge or a man like him. The other two will be carefully chosen with reference to other qualifications. Very likely, the other person will be one who has got accounts experience and experience in trade and commercial transactions. I do not think we can improve the position by opening out the Tribunal to non-officials. The great danger is that if we create a situation as exists in the case of the City Corporation with which my friend, Mr. Vinayakam, is conversant, persons concerned will try to go to the judges themselves, and we are anxious to avoid such things happening."

SRI M. NARAYANA KURUP :—" My only anxiety was whether the officials of the department would be transferred as Members of the Tribunal."

THE HON. SRI C. SUBRAMANIAM :—" Once they go into the Tribunal they will not revert to their original jobs."

[4th January 1954]

SRI M. NARAYANA KURUP :—“ Once they go, I know they will become independent. But I want to know whether they will be appointed at all as Members.”

THE HON. SRI C. SUBRAMANIAM :—“ One Member will be from the Department because, otherwise, the Tribunal cannot know the nature of the work it has to do.”

THE HON. SRI C. RAJAGOPALACHARI :—“ How can we turn the scale entirely against the Government ! ”

MR. SPEAKER :—“ I shall now put the amendments to the vote of the House. The question is—

‘ In sub-clause (i), in line 3, after the word “ appoint ”, insert the words “ in consultation with the South Indian Chamber of Commerce ”.’ ”

THE HON. SRI C. RAJAGOPALACHARI :—“ I think the hon. Member, Mr. Palanisami, will withdraw the amendment for the sake of his party.”

SRI N. K. PALANISAMI :—“ I withdraw the amendment.”

The amendment was, by leave of the House, withdrawn.

MR. SPEAKER :—“ The question is—

“ In the proposed new sub-section (1) of section 2-A, add at the end, the words ‘ but they shall be non-officials ’.”

SRI M. NARAYANA KURUP :—“ In view of the assurances pressed upon me, I do not press my amendment, Sir.”

The amendment was, by leave of the House, withdrawn.

MR. SPEAKER :—“ The question is—

‘ In the proviso to the proposed new sub-section (3) (a), for the word “ may ” substitute the word “ shall ”.’

‘ In the proposed new sub-section (3) (c), after the words

“ In the proposed new sub-section (3) (c), after the words “ appellant or applicant ” in the fourth line, insert the words “ if Bench ”.’ ”

SRI M. NARAYANA KURUP :—“ I withdraw the amendment.”

The amendment was, by leave of the House, withdrawn.

MR. SPEAKER :—“ The question is—

‘ In clause (c) of the proposed sub-section (3) for the words “ the point shall be found . . . points on which they are divided ”, substitute the words “ the appeal or application shall be referred to the Tribunal consisting of all the three members for decisions ”.’ ”

SRI N. K. PALANISAMI :—“ I withdraw my amendment.”

The amendment was, by leave of the House, withdrawn.

4th January 1954]

MR. SPEAKER :—“ I shall now put Mr. Ramalingam's amendment to vote.”

SRI S. RAMALINGAM :—“ Sir, the Government are considering my amendment. I want the proposed sub-section (3) (c) to be so amended as to provide that, where the Bench consisting of two members are divided in their opinion, the point shall be found in favour of the applicant or appellant.”

THE HON. SRI C. RAJAGOPALACHARI :—“ That is, if there is difference of opinion, the appellant should succeed? This would be a very unique proposal in the whole of the Statute Book? ”

* SRI S. RAMALINGAM :—“ நான் என்ன சொல்ல விரும்புகிறேனென்றால், சாதாரண கிரமினல் கேஸ்களில் கூட benefit of doubt is given to the accused.” 1-10 p.m

THE HON. SRI C. RAJAGOPALACHARI :—“ Here the Government is the accused.”

* SRI S. RAMALINGAM :—“ Here the aggrieved party is the merchant, வியாபாரிகள் இவ்வளவு தொகை கொடுக்கவேண்டுமென்று அதிகாரிகள் நிர்ணயித்திருக்கும் தொகையானது அதிகம், அதைக் குறைக்க வேண்டுமென்று அப்பெல்லட் ட்ரிபுனலுக்கு அப்பீல் பண்ணுகிறார்கள். அதே நிலை அப்பீலுக்குப் போயும் நீடிக்குமானால் வியாபாரிகள் பாதிக்கப்படுகிறார்கள். அதனால், வியாபாரிகள் தான் ‘aggrieved party’ என்ற முறையில் இருக்கிறார்கள். ஆகவே, ‘benefit of doubt’ வியாபாரிகளுக்கு காட்டுவதுதான் நல்லது. அதுதான் நியாயம் என்றும் நினைக்கிறேன்.

“இரண்டாவதாக வியாபாரிகளும் மற்றவர்களும் கிளர்ச்சி செய்து கொண்டுவருகிறார்கள். அவர்கள் கிளர்ச்சிசெய்து வருவதினால், இதை அவர்களுக்குச் சாதகமாகச் செய்யலாம். அதனால் சர்க்காருக்கு நஷ்டமில்லை.

“மூன்றாவதாக இருந்த அங்கத்தினர் ட்ரிபுனலில் விஜாரிக்கட்டும். ஏற்கனவே உள்ள பிரிவு கூறுவதாவது.

‘Provided, that if any case which comes up before a Bench (of which the Chairman is not a member) involves a question of law, the Bench may, in its discretion, reserve such case for decision by a Bench of which the Chairman shall be a member.’

“Judicial point இலே இருவருக்கும் வேற்றுமை ஏற்பட்டால், தலைவராக இருக்கக்கூடியவருக்கு அந்த மாதிரி கேஸ் ரிசர்வ் செய்துவிடலாம் என்று மசோதாவில் இருக்கிறது. அந்த மாதிரி இருக்கும்போது இருவருக்குமிடையே வித்தியாசமோ மாறுபட்ட அபிப்பிராயமோ ஏற்பட்டால், அவர்கள் முடிவு பண்ணட்டும் என்று இருப்பது நியாயம் அல்ல. இல்லையென்றால், வியாபாரிகள் மேலும் கஷ்டப்படுவதற்கே இந்த க்ளாஸ் இருக்கும். ஆகையால், சர்க்கார் இதை கவனித்து புனராலோசனை செய்து, ஒத்துக் கொள்வார்கள் என்று நினைக்கிறேன்.”

* THE HON. SRI C. RAJAGOPALACHARI :—“ I am speaking informally. The proposal is that not only in questions of law but also in questions of fact also—I think it comes to that—the Bench may have discretion to refer the case to another Bench with the Chairman on it, the Chairman is not in the original Bench as in the proviso to the sub-clause. I do not think the hon. Member is pressing the other point, that wherever there is a difference of

[Sri C. Rajagopalachari] [4th January 1954]

opinion the appellant shall be enabled to succeed. It is so unreasonable and I think he would not press it. His proposal is definitely a different one, namely, not merely on a question of law but even on a question of fact, the Bench should have discretion to refer the case to another Bench with the Chairman. The point is the person who is judicially qualified is bound to be the Chairman, and therefore, provision is made that where it is a question of law, it should be sent to a Bench with the Chairman. Difference of opinion may arise on points of fact because there are two in the Bench and how can we say that the Bench shall have discretion to refer the case again to another Bench. Even on that they would again differ, one from the other. It will be impossible to get a unanimous verdict on questions of fact. The existing provision is well-conceived. It would not be possible easily to improve upon it. If there is any difficulty in the working of the law, we will try to improve it by and by. As it is, we cannot improve it by adopting the amendment now proposed by the hon. Member."

MR. SPEAKER :—" Is the hon. Member withdrawing his amendment."

SRI S. RAMALINGAM :—" No, Sir. I am pressing my amendment."

MR. SPEAKER :—" The question is—

' In the proposed sub-clause (3) (c), for the word " against " occurring in lines 4 and 7, substitute the words " in favour of " . ' "

The amendment was put and lost.

MR. SPEAKER :—" There are no amendments to Clause 3. I am now going to put the Preamble and Clauses 1, 2 and 3 to the vote of the House."

Clauses 3, 2, 1 and the Preamble were separately put and carried.

THE HON. SRI M. A. MANICKAVELU NAICKER :—" I beg to move—

' That the Bill be passed into law. ' "

MR. SPEAKER :—" Motion moved—

' That the Bill be passed into law. ' "

* SRI K. VINAYAKAM :—" Mr. Speaker, Sir, I rise to oppose this Bill. I know I have very little chance of convincing the Government and make them withdraw this Bill. The object of constituting the Tribunal is to dispense justice to the parties concerned. The suspicion of the Opposition is gradually increasing that the intention of the Government is to create a departmental clique. The departmental demi-gods will be enabled to control the Tribunals. Whenever there is difference of opinion, the power to decide the issue is vested with the Chairman because he has judicial knowledge. The point which this side of the House was pressing upon the Government was that the appellant must have

4th January 1954] [Sri K. Vinayakam]

some scope to get justice from the Tribunal. But here the object with which the Bill has been drafted seems to be to create a 'steel frame.' Tribunal so that the man who goes before the Tribunal is only drawn into a series of appeals, just given a show-down, and finally he succumbs to the ruling of the Tribunal. This is the reason why, I once again appeal that the Bill should be referred to a joint Select Committee."

MR. SPEAKER :—" This is not the stage to make such a recommendation."

* SRI K. VINAYAKAM :—" Then I appeal to the Government to reconsider the position and recast the Bill giving effect to the amendments moved by hon. Members."

* THE HON. SRI M. A. MANICKAVELU NAICKER :—" Sir, in spite of the great emphasis laid by the hon. Member in his speech, he has not convinced me of the necessity for his voting against this Bill. I am afraid he has too much of the departmental phobia. The Tribunal will consist of three members. One will be a District Judge, a man possessing judicial knowledge and experience. The second will be a non-official, a chartered accountant. When he is appointed he will become a full-time servant of the Government. He will be coming with all his non-official experience and sympathies. The third will be a departmental man. He is being put in the Tribunal because, with his departmental experience he can advise the Tribunal on assessment and all such matters. Once he is appointed to the Tribunal he will cease to owe any allegiance to the Department. Probably after he becomes a Member of the Tribunal, with a vengeance he may turn the other way. One cannot say exactly.

" Sir, I request that in Clause 1, the year 1953 may be changed to 1954."

MR. SPEAKER :—" The question is—

" That the Madras General Sales Tax (Amendment) Bill, 1954, be passed into law."

* SRI P. S. KRISHNASAMY AYYANGAR :—" Mr. Speaker, Sir, with regard to the provision in sub-clause (3) (a) giving discretion to reserve cases"

MR. SPEAKER :—" I have already given a chance to the hon. Member. As a special case I shall allow him to speak again now."

* SRI P. S. KRISHNASAMY AYYANGAR :—" Sir, I was not able to keep pace with the speed of the House and therefore I request I may be given an opportunity. According to the sub-clause, when difference of opinion on a question of law arises before a Bench, discretion is given to the Bench to reserve the case for decision by another Bench. Is the discretion confined only to reserve it for decision by some other Bench or is the right to determine the Bench which has got to decide it finally, also given to the

[Sri P. S. Krishnasamy Ayyangar] [4th January 1954]

Bench before which the question of law arises? It is not clear here. Conflict may later on arise. The Bench before which the question of law arises may say: 'I have got to determine the Bench which has got to finally decide this case.' The Chairman may say: 'I have the exclusive right to appoint such a Bench. The position is not clear in the Bill. To avoid such conflicts between one Bench and the Chairman of the Bench, I want that the point should be made clear.'

THE HON. SRI C. RAJAGOPALACHARI:—"The point made by the hon. Member Sri Krishnasamy Ayyangar is this. In the proviso a note should be made to the effect: 'in its discretion reserve any such cases for decision by a Bench to be constituted by the Chairman and the Chairman shall be a Member.' We may probably accept that, Sir."

MR. SPEAKER:—"There is no amendment before the House. If it is only a verbal amendment, I have no objection to accept the amendment proposed by Government. The Hon. Minister may move the amendment."

* THE HON. SRI C. SUBRAMANIAM:—"I move, Sir, that, clause 2 be re-opened for consideration and

'in proviso to sub-section (3) (a) after the word "Bench" occurring in line 4, insert the following words, namely, "to be constituted under this clause".'

The motion was carried and the consideration of the clause was re-opened.

MR. SPEAKER:—"With the permission of the House, I am re-opening clause 2. There is a verbal amendment to sub-clause (3) (a). The motion is—

'That in proviso to sub-section (3) (a) after the word "Bench" occurring in the line 4, insert the following words "to be constituted under this clause."'

"I am going to put the amendment to the vote of the House."

1-20 p.m. SRI S. RAMALINGAM:—"Let the Hon. Minister explain it."

* THE HON. SRI C. SUBRAMANIAM:—"Since Mr. Ramalingam wants an explanation, I shall explain the position. A doubt has arisen as to who are to constitute the new Bench when the original Bench refers a question of law to another Bench. It is not as if discretion is given to the original Bench itself to decide this matter. So, for this purpose, I moved—

'That in proviso to sub-section (3) (a) after the word "Bench" occurring in line 4, insert the following words "to be constituted under this clause".'

4th January 1954]

MR. SPEAKER :—“ The question is—

‘ That in proviso to sub-section (3) (a) after the word “ Bench,” occurring in the line 4, *insert* the following words “ to be constituted under this clause ”.’ ”

The amendment was put and carried.

* SRI P. S. KRISHNASAMY AYYANGAR :—“ Sir, in sub-clause 3 (c) mention has been made about the difference of opinion between the members constituting the Bench on any ‘ point.’ The ‘ point ’ may be a ‘ point of law ’ or a ‘ point of fact ’. With regard to a ‘ point of law ’ provision is made in the proviso to the sub-clause but with regard to a ‘ point of fact ’ no provision is made. If there is difference of opinion as to whether a point is on a ‘ point of fact ’ or a point of law what is to be done? Therefore, instead of the word ‘ point ’ the words ‘ point of fact ’ should be there.”

THE HON. SRI C. RAJAGOPALACHARI :—“ Many more difficulties will be raised. We may leave them to the lawyers concerned.”

Clause 2 as amended was put and carried.

MR. SPEAKER :—“ The question is—

‘ That the Bill as amended be passed into law.’ ”

The motion was put and carried and the Bill was passed into law.

MR. SPEAKER :—“ The House will now adjourn for lunch and meet again at 2-30 p.m.”

The House then adjourned for lunch.

(After lunch—2-30 p.m.)

(3) THE MADRAS CONTINGENCY FUND BILL^a, 1953.

* THE HON. SRI C. SUBRAMANIAM :—“ Sir, I beg leave to introduce the Madras Contingency Fund Bill, 1953 and move—

‘ That the Bill be taken into consideration at once.’

“ This is a very formal Bill. As hon. Members are aware, the Government cannot draw money from the Consolidated Fund except under the authority of the Legislature. It is only for that purpose, after we vote the various Grants, we pass, what is known as the Appropriation Bill, giving authority to the Government to draw money from the Consolidated Fund of the State. But, apart from the Budget proposals, for which sanction is granted by the Legislature, the Government may have to undertake new schemes which have not been contemplated at the time of making the Budget proposals and those cases have to come up before this House again by way of Supplementary Demands. Before we get authority from the Legislature, it is necessary to incur some expenditure. For that purpose, we constitute, what is known as, the Contingency Fund. From that Fund, the Governor is

^a Published in the *Fort St. George Gazette*, dated 9th December 1953.